

Introduced by Senator Scott

January 4, 2006

An act to amend Sections 2352 and 2540 of the Probate Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 1116, as introduced, Scott. Conservatorships.

(1) Existing law generally authorizes a conservator to fix the residence of a conservatee within the state without permission of the court, by selecting the least restrictive appropriate setting, as specified, that is in the best interests of the conservatee.

The bill would require a conservator, prior to sale of real property of a conservatee and placement of the conservatee in a group home, nursing facility, or other residential care facility, to obtain from a licensed realtor at least 2 market valuations of the conservatee's real property proposed for sale, and submit those valuations, along with specified written documentation, to the court for review and authorization.

(2) Existing law provides that sales of real or personal property of the estate of a conservatee are subject to authorization, confirmation, or direction of the court, except as otherwise provided and except for the sale of a conservatee's personal residence. In seeking authorization to sell a conservatee's present or former personal residence, the conservator is required to notify the court that the personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee, among other requirements.

The bill would expand that provision to apply to all of the conservatee's real property. The bill would also require the conservator, within 30 days upon completion of a sale of a conservatee's real property, to submit in writing to the court a

confirmation of the sale price of the real property and any commissions paid, and to whom those commissions are paid.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2352 of the Probate Code is amended to
2 read:

3 2352. (a) The guardian or conservator may fix the residence
4 of the ward or conservatee at either of the following:

5 (1) Any place within this state without the permission of the
6 court. In fixing the residence, the guardian or conservator shall
7 select the least restrictive appropriate setting which is available
8 and necessary to meet the needs of the ward or conservatee, and
9 which is in the best interests of the ward or conservatee. In
10 making a determination of the appropriate level of care for wards
11 or conservatees, guardians or conservators may utilize the
12 statewide nursing home preadmission screening program or a
13 comparable assessment by a community-based case management
14 organization.

15 (2) A place not within this state if permission of the court is
16 first obtained.

17 (b) An order under paragraph (2) of subdivision (a) shall
18 require the guardian or conservator either to return the ward or
19 conservatee to this state, or to cause a guardianship or
20 conservatorship proceeding or its equivalent to be commenced in
21 the place of the new residence, when the ward or conservatee has
22 resided in the place of new residence for a period of four months
23 or such longer or shorter period as is specified in the order.

24 (c) The guardian or conservator shall promptly mail to the
25 court notice of all changes in the residence of the ward or
26 conservatee.

27 (d) *Notwithstanding subdivision (a) and any other provision, a*
28 *conservator, prior to the sale of real property of a conservatee*
29 *and placement of the conservatee in a group home, nursing*
30 *facility, or other residential care facility, shall obtain from a*
31 *licensed realtor at least two market valuations of the real*
32 *property of the conservatee proposed for sale and shall submit*
33 *those valuations, along with written documentation of the*

1 *alternatives to the sale that were considered, such as in-home*
2 *support services, to the court for review and authorization.*

3 (e) This section does not apply where the court has made an
4 order under Section 2351 pursuant to which the conservatee
5 retains the right to fix his or her own residence.

6 SEC. 2. Section 2540 of the Probate Code is amended to read:

7 2540. (a) Except as otherwise provided in Sections 2352,
8 2544, and 2545, and except for the sale of a conservatee's
9 ~~personal residence~~ *real property* as set forth in subdivision (b),
10 sales of real or personal property of the estate under this article
11 are subject to authorization, confirmation, or direction of the
12 court, as provided in this article.

13 (b) In seeking authorization to sell a conservatee's ~~present or~~
14 ~~former personal residence~~ *real property*, the conservator shall
15 notify the court that the ~~personal residence~~ *real property* is
16 proposed to be sold and that the conservator has discussed the
17 proposed sale with the conservatee. In addition, the conservator
18 shall inform the court whether the conservatee supports or is
19 opposed to the proposed sale and shall describe the
20 circumstances that necessitate the proposed sale, including
21 whether the conservatee has the ability to live in the ~~residence~~
22 *real property*. The court, in its discretion, may require the court
23 investigator to discuss the proposed sale with the conservatee.
24 This subdivision shall not apply when the conservator is granted
25 the power to sell real property of the estate pursuant to Section
26 2590.

27 (c) *Upon completion of a sale of a conservatee's real*
28 *property, within 30 days the conservator shall submit in writing*
29 *to the court a confirmation of the sale price of the real property,*
30 *and any commissions paid, and to whom those commission are*
31 *paid.*